

8 Plaintiffs,

9 VS.

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UNITED STATES METALS)

11 REFINING COMPANY, ET AL,)

Defendants.)

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14 F.R.C.P. 30(b)(6)

UNITED STATES METALS REFINING COMPANY, FREEPORT

16 MINERALS CORPORATION AND AMAX REALTY DEVELOPMENT, INC.

17 ORAL AND VIDEOTAPED DEPOSITION OF

48 JOSEPH A. BRUNNER

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20 VOLUME 1

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1 to understand before I can give a more precise answer.

2 Q. (By Mr. Nidel) Okay. I'm going to clarify
3 them for you. Being released to a neighborhood, okay?
4 Would you agree that a company that releases, as USMR
5 did, lead, cadmium, arsenic and dioxin into a
6 residential neighborhood should clean them up?

7 MR. SCHICK: Objection. Form.

8 A. Again, were they being released in excess of
9 standards of regulatory obligations, of, you know -- I
10 can't say yes or no.

11 Q. (By Mr. Nidel) Okay. You cannot answer the
12 question yes or no unless I specify whether they're
13 being released in excess of some regulatory obligation
14 that may or may not have existed in 1940. Is that
15 your testimony?

16 MR. SCHICK: Objection. Form.

17 A. I need to understand, you know, kind of, you
18 know, what the releases were, what the impact on the
19 community, you know, might have been and, you know --
20 you know, you're not -- you've not given me that
21 clarification.

22 Q. (By Mr. Nidel) You know how they were
23 released by USMR. Correct?

24 A. Generally they were released through stack

1 and fugitive emissions, if you're talking about the
2 operation of the -- of the historic smelter.

3 Q. Okay. The smelter and the related other
4 things that went on at that facility. Correct?

5 MR. SCHICK: Objection. Form.

6 A. Other things?

7 Q. (By Mr. Nidel) The other furnaces, the lead
8 plant, those things. Right?

9 A. Okay.

10 Q. That's part of the facility. Right?

11 A. That'll be part of the -- yeah, the larger
12 facility, yes.

13 Q. And assuming that the hazardous pollutants
14 including lead, arsenic, cadmium, dioxin, were
15 released in a way that was through the stacks and
16 through fugitive emissions into a residential
17 community, would you agree that a company should then
18 clean them up?

19 MR. SCHICK: Objection. Form. Beyond
20 the scope.

21 A. Again, released at what concentrations from
22 the source and, you know, what concentration within
23 the community?

24 Q. (By Mr. Nidel) What concentration did USMR

1 release pollutants into the community?

2 A. I don't know those numbers. That might have
3 been something you would have obtained from Mr. Fenn
4 from historic operations.

5 Q. Unfortunately he couldn't really provide
6 those.

7 A. I'm equally unable to cite any specifics.

8 Q. Okay. So as part of your cleanup on the
9 site, you did not go back and try to understand what
10 the nature of USMR's emissions were?

11 A. As part of the onsite cleanup?

12 Q. No. As part of your offsite cleanup, did you
13 not go back to determine how those -- you're
14 struggling to answer my question. I said the way USMR
15 did. Do you not know how USMR released pollutants
16 into the environment?

17 MR. SCHICK: Objection. Form. He's
18 already answered that.

19 A. They were released through stacks and through
20 fugitive emissions.

21 Q. (By Mr. Nidel) Okay. What was?

22 A. Various -- various metals.

23 Q. Okay. Name them.

24 A. I don't have a comprehensive list in my head,

1 but copper, lead, arsenic, zinc, cadmium, a couple of
2 others potentially, selenium.

3 Q. Dioxin?

4 A. There was stack testing performed that
5 indicated that there were levels of dioxin emitted, as
6 well.

7 Q. Okay. So -- and were they in compliance with
8 regulatory standards or not?

9 MR. SCHICK: Objection. Form.

10 A. When?

11 Q. (By Mr. Nidel) Historically. Were they ever
12 out of compliance with regulatory standards?

13 MR. SCHICK: Objection. Form.

14 A. It's my understanding that there were some
15 notices of violation issued by the DEP during the '70s
16 and '80s.

17 Q. (By Mr. Nidel) In the '60s?

18 A. I'm not aware of any in the '60s.

19 Q. Okay. When did regulations with respect to
20 USMR's emission of pollutants, when did they start
21 regulating those?

22 A. I don't know precisely, but it was more
23 than -- more than likely with the advent of the Clean
24 Air Act in the early '70s.

1 standpoint, I mean, certainly those are important
2 factors. I mean, they're not the only factors. I
3 mean, there's meteorological conditions, all sorts of
4 things that go into a model, all of which when you're
5 looking back over the operation of a facility that
6 operated as long as USMR they're -- you know, they're
7 somewhat estimates. So you use the -- you know, the
8 best data that you can to put a model together,
9 qualifying it that it's based on -- on estimates.

10 What was -- what was important for the model
11 that was developed was, it substantiated the
12 conceptual site model that we had developed and in
13 that, you know, emissions from the facility generally
14 dropped out in fairly close proximity to the site and
15 then dropped exponentially, asymptotically, whatever
16 word you want to use, as you moved away from the site.
17 That was the basis for our conceptual model which we
18 attempted to validate through the sampling and the
19 ISDA.

20 Q. (By Mr. Nidel) Okay. And did the sampling
21 and the ISDA as well as all the other sampling, did it
22 in fact validate that model?

23 A. The ISDA sampling did validate that model.
24 We looked at -- essentially followed the DEP

1 guidelines on establishing essentially a set of
2 concentric arcs that gradually go away from the
3 facility. Sampling within those arcs showed a
4 decrease in the metals that we were analyzing for
5 consistent with our conceptual site model.

6 Q. So it's your testimony that it's not
7 important to you to know -- to your work in
8 delineating the horizontal and vertical extent of
9 contaminants from the site to know how much of those
10 contaminants were released from the site and what the
11 historical breakdown was of those releases?

12 MR. SCHICK: Objection. Form.

13 A. At the end of the day, frankly, it's not that
14 important. What's important is -- I mean, you can --
15 you can do the best air quality model in the world
16 and, you know, it's still going to be exactly that, a
17 model. What we think is the most appropriate way to
18 determine what the impacts are are to get actual
19 samples.

20 Q. (By Mr. Nidel) Okay. And that's what you
21 guys decided, was that you were going to rely on
22 actual samples rather than modeling. Correct?

23 A. We used modeling to inform, you know, what
24 the likely boundary of the ISDA and then ultimately

1 believe that was the case.

2 Q. Did you review the modeling work that was
3 done by Radian in 1986?

4 A. Very generally. It was a pretty long report.

5 Q. But you reviewed it for your deposition.

6 Right?

7 A. Yeah, quite a while ago, but yeah, I did look
8 at it.

9 Q. Okay. Did you review it as part of your work
10 in delineating the extent of contamination in
11 Carteret?

12 A. The work?

13 Q. Yeah. Prior -- other than for your
14 deposition, did you review it for your -- for purposes
15 of your work?

16 A. Not really. You know, we used what's been
17 represented as the McVehil model to support the
18 conceptual site model. But again, what's really
19 informed are ongoing work and the AOC was actual
20 sampling data.

21 Q. Who did the model that supports the
22 conceptual site model?

23 A. Who did the model?

24 Q. Who performed it, yeah?

1 Q. You avoided wooded -- pressure-treated wood
2 such as fenced areas and sheds. Correct?

3 A. I believe so, yes.

4 Q. Okay. You avoided known or identified
5 dumping areas. Correct?

6 A. I believe so.

7 Q. Okay. Do you agree that although air
8 deposition may initially deposit these metals in a
9 relatively uniform pattern, the cumulative localized
10 disturbances -- although air deposition may initially
11 deposit these metals in a relatively uniform pattern,
12 the cumulative localized disturbance such as
13 excavations, grading, landscaping and wind erosion, of
14 soil at any given location that can occur in this case
15 over a period of 80 years can redistribute these
16 metals and result in localized variances in soil metal
17 concentrations?

18 A. I would -- I would agree that disturbances to
19 the soil with any -- within any particular yard area
20 can cause different distribution of the constituents
21 contained in that soil.

22 Q. But your conceptual site model essentially
23 was based on a blanketing of decreasing deposition
24 across the neighborhood. Correct?

1 A. That's the conceptual site model, yes.

2 Q. Who is Brian Pederson or Pederson?

3 A. Brian Pederson?

4 Q. And I just read documents. I don't know who
5 he is.

6 A. I don't know.

7 Q. Was he an early LSRP involved in the work?

8 A. Not to my knowledge. The only LSRP that
9 we've retained on this site is Mr. McNally.

10 Q. How soon after you received the results of
11 the lab testing -- well, let me start. You submitted
12 the samples to the lab. What was the turnaround time
13 for the samples that you submitted?

14 A. For which?

15 Q. I assume -- I was assuming for metal sampling
16 that there was a routine of 14 or 21 days.

17 MR. SCHICK: ISDA? AOC?

18 Q. (By Mr. Nidel) If it was different I
19 understand. I was assuming it wasn't and I thought we
20 could quickly cut to the chase, but --

21 A. I think the normal turnaround time is
22 typically two weeks.

23 Q. Okay.

24 A. From receipt at the lab.